light companies the duty of furnishing power upon proper application, and provides a penalty for failure to comply, with a proviso that the penalty shall not be imposed "when in the opinion of the court the default was caused by inevitable accident or *force majeure*." The defendant's employees refused to connect the complainant's building because it was wired by non-union men. It was found that if the defendant had discharged the men thus refusing, all of his employees would have gone on strike; and it would have been difficult or impossible to replace them. The defendant was convicted on information under the statute. *Held*, that the conviction be sustained. *Hackney Borough Council* v. *Dore*, 152 L. T. 383 (K. B.).

No clear principle has yet been enunciated for determining what will excuse the performance of a public utility's common-law or statutory duty to furnish services. It is clear that Acts of God, or *vis major*, will excuse. *Gray* v. *Wabash R. Co.*, 119 Mo. App. 144, 95 S. W. 983. The principal case may be taken to mean that, under the English statutes, *vis major* alone will excuse, and that a strike of this sort is not *vis major*. But whether the American cases at common law apply similar rules is far from clear; principles have not been stated with care. Strikes conducted by means of force and violence are held to excuse. *Pittsburgh, etc. R. Co.* v. *Hollowell*, 65 Ind. 188; *Geismer* v. *Lake Shore R. Co.*, 102 N. Y. 563; *Galveston, etc. R. Co.* v. *Karrer*, 109 S. W. 440 (Tex. Civ. App.). But a peaceful strike for higher wages is no excuse. *People* v. *N. Y. Central R. Co.*, 28 Hun (N. Y.), 543. One court has held a strike an excuse without considering its nature. *Murphy Hdw. Co.* v. *Southern R. Co.*, 150 N. C. 703, 64 S. E. 873. See *Southern R. Co.* v. *Atlanta Sand Co.*, 135 Ga. 35, 54, 68 S. E. 807, 816. A strike boycotting cars of a connecting carrier — a case closely analogous to the principal case — was held an excuse. *Chicago, B. & Q. R. Co.* v. *Burlington, etc. R. Co.*, 34 Fed. 481 (Circ. Ct., S. D. Ia.). It seems impossible to reconcile all these decisions. It may be suggested, however, that the line be drawn between legal and illegal strikes. A strike like that in the principal case would, in most jurisdictions, be held illegal. *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *Burnham* v. *Dowd*, 217 Mass. 351, 104 N. E. 841; *Purvis* v. *United Brotherhood*, 214 Pa. St. 348, 63 Atl. 585. *Contra, Parkinson* v. *Building Trades Council*, 154 Cal. 581, 98 Pac. 1027. See *Bossert* v. *Dhuy*, 221 N. Y. 342, 117 N. E. 582. For England, see TRADE DISPUTES ACT, 1906, 6 EDW. 7, c. 47. Any such suggestion, however, but illustrates the futility of leaving such complicated matters of large public concern to the courts. Such delicately balanced questions are primarily subjects for administrative determination. See 35 HARV. L. REV. 450.

SUBROGATION — EFFECT OF SECOND MORTGAGE ON THE RIGHTS OF A PARTY SUBROGATED TO THE SECURITY OF THE FIRST MORTGAGEE. — To secure a debt, D, holding an unincumbered fee in Blackacre, executed a first mortgage upon it in favor of C, who had the mortgage duly recorded. In the jurisdiction, it gave C a legal lien on the property. D then misapplied money belonging to S in partially paying the debt, C receiving it without notice of the wrong. This payment was not recorded. Later, D executed a second mortgage on Blackacre to P, who paid value and had no knowledge of the mortgage to C. D died, and in administration proceedings against his estate, after the remainder of C's claim had been fully satisfied, S seeks to come in ahead of P against the security, claiming subrogation to the rights of C under the first mortgage. *Held*, that S recover. *McCullough* v. *Elliott*, [1921] 3 W. W. Rep. 361.

For a discussion of the principles involved, see NOTES, *supra*, p. 596.

TRADE-MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — USE OF TRADE-MARK ON GENUINE GOODS. — The plaintiff purchased the American business of a French firm, which sold, under trade-marks registered in the

United States, face powder manufactured by it in France. The plaintiff imported this firm's powder in bulk, repacked it, and sold it under the trade-marks used by the French company. The defendant imported the same face powder in the original trade-marked boxes and resold it in competition with the plaintiff. In a suit to enjoin the defendant from selling these goods under the registered trade-marks, the district court granted a motion for a preliminary injunction. *Held*, that the order be reversed. *A. Bourjois & Co., Inc.* v. *Katzel*, 275 Fed. 539 (2d Circ.).

The function of a trade-mark is to denote the origin and genuineness of an article with which it has become associated. See *President Suspender Co.* v. *MacWilliam*, 238 Fed. 159, 161 (2d Circ.). See SEBASTIAN, TRADE-MARKS, 5 ed., 2, 14. It thus serves the double purpose of protecting the owner in his business, and safeguarding the public from deception. The majority of the court in this case conclude that the latter is the primary purpose, and that there is no infringement as long as the original article is being sold. *Apollinaris* v. *Scherer*, 27 Fed. 18 (Circ. Ct., S. D. N. Y.); *Russia Cement Co.* v. *Frauenhar*, 133 Fed. 518 (2d Circ.); *Gretsch Mfg. Co.* v. *Schoening*, 238 Fed. 780 (2d. Circ.). The dissenting judge regards the former as the primary purpose, and concludes that even a sale of the genuine goods may be an infringement. The majority view seems the sounder. Admittedly, the manufacturer of these goods has the exclusive right to use this trade-mark. The decision in the principal case does not deprive him of the good will which his advertising and the merits of his product have secured. It only recognizes that there can be no grant of a territorial monopoly in the resale of such goods under the trade-mark. See *Apollinaris* v. *Scherer*, *supra*, at 21; *Coca-Cola Co.* v. *Bennett*, 225 Fed. 429, 432 (D. Kan.). See SEBASTIAN, *op. cit.*, 13. Such a monopoly would run counter to the social interest in freedom of competition — the more so since trade-mark rights may be perpetual. It is unfortunate that the plaintiff in this case has paid for something which the law does not secure; but that cannot affect the decision.

WILLS — ALTERATIONS AND MODIFICATIONS — MODIFICATION OF LEGACIES BY CHANGE OF BENEFICIARIES IN TRUST DEED. — The testator made a trust deed of part of his property, reserving the income to himself for life, with gifts over to named beneficiaries. He reserved a power to revoke or change any trust therein declared. On the same day he made his will, the residuary clause of which gave property to the trustee under the trust deed "to be held . . . in the same manner as though [it] . . . had been deposited by me as a part of said trust estate." The testator later made several changes in the trust deed, and then died. *Held*, that the residuary clause is void. *Atwood* v. *Rhode Island Hospital Trust Co.*, 275 Fed. 513 (1st. Circ.).

It is well settled that a testator may not reserve a power to modify his will by merely giving directions at some future time. *Hartwell* v. *Martin*, 71 N. J. Eq. 157, 63 Atl. 754. But if the beneficiaries are to be ascertained by some act that has an immediate legal effect and therefore is not purely testamentary, the disposition is good. A gift to those who shall be my partners at my death is valid. *Stubbs* v. *Sargon*, 3 Myl. & Cr. 507. So is a gift to those who may be farming my farm and taking care of me at my death. *Reinheimer's Estate*, 265 Pa. St. 185, 108 Atl. 412; *Dennis* v. *Holsapple*, 148 Ind. 297, 47 N. E. 631. And the testator may provide that advances of money noted in the regular course of business shall cut down legacies. *Langdon* v. *Astor's Executors*, 16 N. Y. 9; *Moore's Case*, 61 N. J. Eq. 616, 47 Atl. 731. The principal case seems within the principle of these decisions. If naming beneficiaries in the trust deed had no present legal effect, it is hard to see why that deed is not invalid as an improperly attested testamentary instrument. But the validity of the trust deed is conceded by the court. Evidently the court fails to recognize the inconsistency of its position.